IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 214 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

BOMBAY CONDUCTORS & ELECTRICALPVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 214 of 1990
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 20/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

The following question of law has been referred to this court at the instance of the revenue by the Income Tax Appellate Tribunal Ahmedabad Bench 'C' under the provisions of sec. 256(2) of the Inome-tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether, in the law and on facts, the Commissioner of Income-tax (Appeals) was justified in directing the Income-tax Officer to recalculate the interest under section 244(1A) and issue appropriate refund orders to the assessee and the Tribunal was right in law in confirming the view taken by the Commissioner of Income-tax (Appeals)?"

2. We have heard Mrs. Mona Bhatt, Central Government Standing Counsel, appearing for the revenue. Nobody has appeared for the respondent assessee though the respondent assessee has been duly served with the notice of this court.

3. The facts involved in the reference, in a nutshell, are as under :

4. In pursuance of an order passed by the Tribunal, The Income-tax Officer had awarded interest to the assessee as per the provisions of sec. 244(1A) of the Act as the assessee had become entitled to get the amount of refund. The assessee was given the amount of interest, but the said order was rectified under the provisions of sec. 154 by the ITO as the ITO later on thought that the amount of interest was given to the assessee due to mistake. Being aggrieved by the order passed under the provisions of sec. 154 of the Act, an appeal had been filed before the CIT (Appeals) and the appeal had been allowed. The revenue challenged the validity of the order passed by the CIT (Appeals) before the Tribunal and the Tribunal upheld the order of the CIT (Appeals).

5. Though the learned Standing Counsel has tried her best to support the order passed by the ITO under sec. 154 of the Act, looking to the fact that the respondent assessee had become entitled to the amount of refund, it cannot be disputed that the assessee had become entitled to the amount of interest under sec. 244(1A) of the Act. The order, which was initially passed by the ITO, was just and proper and therefore no mistake was committed by

him in awarding the amount of interest and there was no question of passing any order for rectification under the provisions of sec. 154 of the Act.

6. Simply because the Tribunal did not give any direction with regard to paying interest, it cannot be said that the assessee was not entitled to the amount of interest because the provisions of sec. 244(1A) of the Act clearly mention that whenever an additional amount of refund becomes payable to the assessee, or when the order of penalty paid by the assessee is quashed and set aside, the assessee becomes entitled to interest on the amount which becomes payable to the assessee.

7. In our opinion, the Assessing Officer was justified in awarding interest as per the provisions of sec. 244(1A) of the Act. We are, therefore, of the view that the Tribunal did not commit any error while confirming the order passed by the CIT (Appeals).

8. In view of the above facts, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(K.M. Mehta, J.)

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